No. 09-999

In The

Supreme Court of the United States

CLIFTON MALLERY A/K/A ENJAI OMAA EELE,
AMNAU KARAM EELE,

Petitioners,

v.

NBC UNIVERSAL, INC., NBC UNIVERSAL TELEVISION STUDIO, TAIL WIND PRODUCTIONS, TIM KRING, DENNIS HAMMER, ALLAN ARKUSH, JEPH LOEB, BRYAN FULLER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY BRIEF

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April 14, 2010

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STATEMENT IN REPLY TO RESPONDENTS BRIEF IN OPPOSITION

Petitioners would like to reply to the respondents opposition. NBCU Attorney Marcia Paul asked in her "Brief in Opposition" "whether the second circuit correctly affirmed the grant of summary judgement to respondents on the issue of substantial similarity where the decision of the district court was based solely upon and fully supported by a careful comparison and analysis of the parties respective work" under long established standards.

Petitioners would like to state that in *Twentieth Century-Fox Film Corp. v. MCA Inc.*, 715 F.2d 1327 (9th Cir. 1983) the opinion of Law relating to a grant of summary judgement is clear.

Only if no genuine issue of material fact exists on the question of substantial similarity of idea and idea expression will the moving party be entitled to prevail as a matter of law Fed. R. Civ. P. 56(c). *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-90, 88 S. Ct. 1575, 1592-93, 20 L. Ed. 2d 569 (1968).

Under Rule 56(c) the standard governing our review by the trial, (*British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951 n. 6 (9th Cir. 1978) the court must view the evidence and inferences therefrom in the light most favorable to the non-moving party, herein petitioners. (The words "petitioners shown favor by the judge" was never used in relation to the petitioners). The court concluded that the films do in fact raise genuine issues of material fact as to whether only the Star Wars idea or the expression of that idea was copied. *Sid & Marty Krofft Television Prods., Inc. v.*

McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977). At a minimum, it was a close enough question that it was resolved by way of a trial.

Summary judgement is appropriate, where undisputed facts raise a complete defense as a matter of law, where both works are so dissimilar that a claim of infringement is without merit. This, however, is not such a case.

The court therefore should reverse and remand this case for trial. A CAREFUL SIDE BY SIDE VISUAL AND LITERAL COMPARISON AND ANALYSIS of the petitioners manuscript ("journey") and short film ("The Letter") and the respondents scripts and filmed episodes of "Heroes" shows that a genuine issue of material fact does indeed exist.

Starting with the visual substantial similarity of NYC artist Enjai Eele a/k/a Idai Markus the fictional copyrighted character and respondents NBC Heroes pilot script with character Isaac Mendez appear at Petition for Writ - Appendix H, I, J as well as 23 other visual and literal similarities. (See Support Material for Oral Argument, Volume I thru V, on Record in the Appeals Court appearing at Petition for Rehearing En Banc - received June 10, 2009 GRANTED June 16, 2009. (Character storyline comparison appear at APPENDIX A).

NBC's legal department has a long upheld established standard that attorney Marcia Paul and Hilary Lane of NBC's legal department should be well aware of, the company Clearance Domain and legal clearance documentation required in the TV and Film Industry.

Statements enclosed by former NBCU employee JoAnn Vara will demonstrate that NBC Hilary Lane and Marcia Paul should have presented legal clearance documents proving research, permission, Error & Omission insurance and legal clearance to use copyrighted elements of the petitioners intellectual property, or was NBCU using a double standard of law and justice, intentionally over looking these legal clearance standards to assist NBC in evading legal liabilities. (Statement by JoAnn Vara, Emily Milias and PIERCE LAWGROUP LLP – legal standards upheld by Copyright law, NBC and TV and Film industry appear at APPENDIX B).

In an interview with NBCU's employee Harrison Wilcox the Script Clearance Coordinator for NBC TV Series "Heroes", Mr. Wilcox discusses NBC's Legal Clearance Standards for "Heroes". He states: "Script Clearance deals more with the legal permissions and protections of the show. Every script written gets sent to a research company. That company does a full report on the script and sends that information back to us. Stuff like NAMES OF CHARACTERS IN RELATION TO REAL PEOPLE. Using that report I work with the writers and our lawyer SAFRONIA JOHNSON to make sure there is nothing in the scripts that shouldn't be there. I also work with Art Department, Props, Set Dec, Wardrobe, and Post, to make sure we have permission to use everything that goes on camera. If we don't have permission, I try to get it. If we can't get permission, I usually come up with fictional names for things. Costa Verde and Copy Kingdom are examples of this. That's basically what I do. NBC Standards do their own reports which everyone on the show makes sure to follow.

I'm very proud to say that I've been on Heroes since the pilot. I was hired as an Office Production Assistant - my first job in the industry - and moved into my current position by the middle of season one. Yes, I did have to get permission to use certain characters. Everyone always has to. I'm always wondering what happened to the characters that we haven't seen in a while. (See Interview:Harrison Wilcox - lotsofinterviews - http://www.lotsofinterviews.com/#/interviewharrison-wilcox/4 531985068 - Clearance Exhibit USUTU character appear at APPENDIX C.

Petitioners would like to say to the court that a careful comparison and analysis of *Mallery v. NBCU* would include: The legal clearance documents that Mr. Wilcox speaks of and Tim Kring admitting how he "lied, cheated, schemed and manipulated through the notes process to get Heroes on the air". "Its not the most original idea" "You build and borrow" "We are literally making up the parameters of intellectual property" "It's a wild west. There are no rules. Just take something that sounds cool and go try it." (See Petition for Cert Appendix O 56a, 57a) http://blog.the-eg.com/2007/12/04/tim-kring.

Petitioners have raised an issue of Federal law (18 U.S.C. 1343) that should land the respondent Tim Kring and his attorney Marcia Paul in prison if Tim Kring refuses to demonstrate to the courts where he "borrows" from and how he "lied and cheated" to get Heroes (a stolen copyrighted IP) on the air for massive profits for NBCU. This is not only Rico, it's wire fraud on a global level with global profits made by NBCU on a production "Heroes" that NBCU has no legal clearance documents for. (See Support Material for Oral Argument, on Rico Law - Volume I [cover letter

section] & Volume II, [section K]) on Record in the Appeals Court appearing at Petition for Rehearing En Banc - received June 29, 2009 GRANTED June 16, 2009.

There are no Legal documents of Errors and Omissions policies in NBCU's "brief in opposition" to the courts that cover the legal liability and defense costs for the production company against lawsuits alleging unauthorized use of title, format, IDEAS, CHARACTERS or plots, PLAGIARISM, unfair competition or piracy, alleged libel, slander, defamation of character or invasion of privacy. All distributors require production companies to obtain E&O insurance policy. (See Production Insurance - Film & TV - http://www.tvdco.com/home/filmDetail.

In Marcia Paul's preliminary statement, she claims that the petitioners fail to present a split in the Circuit Courts or an important issue of Federal Law under careful comparison and analysis under applicable standards. The petitioners state in both cases (*Mallery v. NBC*) and (*Fox v. MCA Inc.,*) the issue raised in the motion was whether defendants production was so dissimilar to plaintiffs works, as to both ideas and expression of those ideas, that no material issue of fact existed on the question of substantial similarity, and the question could it be decided as a matter of law. Fox argued in it's brief that a comparison of the two works discloses at least 34 similarities. In *Mallery v. NBC*, the two works discloses at least 23 similarities with no legal clearance. The defendants may prevail only if no genuine issue of material fact exists on the question of substantial similarity of idea and idea expression. The court intimate no opinion whether the films are substantially similar as to either idea or expression,

but state only that reasonable minds could differ on those key factual issues. Similarly, summary judgement for defendant is appropriate where works are so dissimilar that a claim of infringement is without merit. The court therefore reverse and remanded this case for trial.

The elements questioned in both respective works are not dissimilar, those copyrighted elements of the petitioners copyrighted IP have been incorporated and mainstreamed into the respondent work ("Heroes") as clear and distinct recognizable elements.

Why would any petitioner in any court of law "reasonably expect" a U.S. Judge to issue a "summary judgement" without notice when the respondent Tim Kring has no legal clearance and is in the media admitting he "lied, cheated, schemed and manipulated through the notes process to get Heroes on the air" that features a main character as "a artist that can paint the future with a drug problem, when the petitioner is a real life drug free artist that can paint the future whose work is exhibited in real life art galleries, museums, published in major magazines, newspapers, studied by academia professors with a fictional character named "Idai Markus, the NYC African American artist that can paint the future" based on the real life petitioner's life? (Russell Simmons "One World" magazine article titled: "Twin Hope" appear at APPENDIX D).

On factual background the Petitioner only claim infringement on two creative works, the petitioners manuscript entitled: The Twins; Journey of the Soul ("Journey") copyrighted June 1, 2001 - registered April 13, 2007 and a short film excerpt from the "Journey"

entitled: The Letter, copyrighted April 4, 2004 - registered September 20, 2006 appear at APPENDIX E.

NBCU legal department and Marcia Paul submitted a document dated Oct 23, 2006 stating that "the character of Issac Menendez (correctly spelled Issac Mendez) is an entirely original creation of (respondent) Tim Kring, the creator of this Series. Respondent Tim Kring told the media that Heroes, "it's not the most original idea" "you build and borrow". The petitioners would like to ask the court has respondent Tim Kring committed perjury in court with his "Heroes is not original" statement? (See Petition for Writ - Appendix O 56a) Document dated Oct 23, 2006 appear at APPENDIX F.

Petitioners true factual background as Luba Divination artists that can paint and write the future, came to NYC with a painting titled: The Atta Page (See Petition for Writ – Appendix H) to Join with other regular people with extra-ordinary abilities to stop terrorist Mohamed Atta from attacking two NYC landmark buildings in NYC BEFORE September 11, 2001. The petitioners were teaching their art form from their manuscript The Twins: Journey Of The Soul April 22, 2005 at Hunter College NYC, the NBCU representatives attended this show. (See Petition for Writ - Appendix N 54a [p.13]). Respondent Tim Kring stated in the media that before 2005 he had no ideas until Oct - Nov 2005, the two months he claimed he came up with "his original idea for the artist that could paint the future and regular people with extra-ordinary abilities trying to stop a nuclear blast by a terrorist in NYC against two NYC land marked buildings." The respondent Tim Kring added another

character without any legal clearance to "Heroes" named Usutu, a African artist that could paint the future, a character even closer to petitioners character Idai Markus. This is willful infringement by the respondent. (See Petition for Writ - Appendix O 56a - http://blog,the-eg,com/2007/12/04/tim-kring/and Support Material for Oral Argument, Volume I [section E - interview titled: TIM KRING - HEROES], [USUTU - from Heroes Wiki] received Jun 10, 2009 GRANTED Jun 16, 2009 - on Record in the Appeals Court appearing at Petition for Rehearing En Banc).

The Court of Appeals Decision. Under Fed. Rules Civ. Proc. Rule 56, at the Summary Judgement stage, the Judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. The Judge must ask, NOT whether the evidence unmistakenly favors one side or the other but whether A FAIR MINDED JURY could return a verdict for the petitioners on the evidence presented.

The emergency injunction in question where Marcia Paul fails to inform the Supreme Court about a website owned by a "NBCU MARKET AFFILIATE" named Jason Hill a/k/a. "Rubixcubeman" who is in a legal agreement with NBCU through "Linkshare" to generate sales and viewers for "ShopNBC" and all "Heroes" products using the petitioners name and likeness from a NY Daily News newspaper article without permission or legal clearance. The mission of the website is to show the public that there is a "Real Living Artist that can paint the future named Enjai Eele a/k/a. Idai Markus" like the drug addicted character Issac Mendez on NBC TV show Heroes. This website is defamation to the petitioners personal

character and copyrighted IP because both petitioners DO NOT do drugs. This site: http://www.therealheroes.blogspot.com/2006/10/mission-5-see-connections.html was on the internet BEFORE the petitioners filed any lawsuit against NBCU and was never cleared by NBCU EMPLOYEE HARRISON WILCOX, appear at APPENDIX G (See Support Material for Oral Argument, Volume II [section F & G - Petition for Emergency Injunction - received Jun 15, 2009) on record in the Appeals Court appearing at Petition for Rehearing En Banc).

The Mischaracterization of the Facts and Record. Noted, NBCU did concede "access" solely for the purposes of its motion to dismiss as stated by Marcia Paul. Why concede to "access" if its not true?

The respondents motion should be based on truth, not on mis-representation of events or facts with no legal clearance. The Appeals Court in turn only repeated what was in the respondents motion. (See Petition for Writ - Appendix N, 54a - Oral argument page 13). The Respondent Tim Kring stated in interviews his usage of artwork in the pilot script as a sales device to pitch "Heroes" to NBC network. The artist that paints the future is the only character in respondent's work illustrated in his pilot script. (See NBC Heroes pilot script illustration at Petition for Writ - Appendix H) Interview appear at APPENDIX D On-1: Talking with "Heroes" Creator Tim Kring - Comic Book Resources http://www.comicbookresources.com/?page=article&id=8146.

The face to face settlement meeting was held on May 17, 2007, NOT MAY 7, 2007 as stated incorrectly

in Marcia Paul's "Brief In Opposition", (See Marcia Paul Description of Services) appear at APPENDIX H.

Marcia Paul after reviewing access material and hearing oral comparison presented by attorney Robert Wolf of Gerston Savage LLP, requested to speak to the petitioners directly and made a verbal offer of a Nuisance Insurance settlement of $750,000.00 and 5% net royalty. (Nuisance Insurance offers are a common practice in the film & TV industry to acquire product content unlawfully at low to no cost).

Marcia Paul's second offer was sent to John Coleman (counsel to petitioners) asking if they (the petitioners) WOULD DROP THE LAWSUIT AND WOULD NOT file for an appeal, in return, Marcia Paul would waive the $100,000.00 attorney fees against the petitioners. (WHY MAKE AN OFFER OF ANY KIND AFTER NBCU HAS WON IN THE DISTRICT COURT IF THERE IS NO MERIT IN PETITIONERS CLAIM?) (See Petition for Writ - Appendix L. - E-mail From John Coleman to Marcia Paul).

The Reason for Granting this petition:

As mentioned in the Petition For Writ the court reverse and remanded the case (*Fox v. MCA Inc.*,) for trial. In the case of *Bridgeport Music, Inc., and Southfield Music, Inc. v. UMG Recordings, Inc., and Universal Music Investments, Inc.*, No. 07-5596 (6th Cir. Nov. 4, 2009), a jury found UMG Recordings Inc., and Universal Music Group Inc., to have willfully infringed Bridgeport's rights in "Atomic Dog", notifying them that elements of "Atomic Dog" were used in a recording without permission. UMG filed a motion for

summary judgement claiming that the allegedly infringing elements in "D.O.G. in Me", the use of the word "dog" "were not copyrightable as a matter of law." The district court denied UMG's motion, and the matter proceeded to trial.

In this case (*Mallery v. NBC*) the respondent argued that "the elements infringed were "mere ideas," "scenes a faire", "unprotected elements", not copyrightable as a matter of law, that are free for the taking (Fair Use)." Those infringed elements were main storylines and at the core of the respondent work. In such situations, "TO CONSTITUTE INFRINGEMENT, A SINGLE LINE TAKEN FROM A PROTECTED WORK, AN INTREGRAL PART" OF THAT WORK" not "merely an incidental part of the background" and "READILY RECOGNIZABLE." Copying of a "QUALITATIVELY IMPORTANT AND CRUCIAL ELEMENT" "A SINGLE BRIEF PHRASE SO IDIOSYNCRATIC AS TO PRECLUDE COINCIDENCE might suffice to show substantial similarity and copying. The district court utilized the "fragmented literal similarity" standard. The petitioners storyline of an artist who can paint the future on canvas before it happens, is a UNIQUE, ORIGINAL, FULLY DEVELOPED COPYRIGHTED EXPRESSION that's an "INTREGRAL PART" OF THE PETITIONERS WORK and READILY RECOGNIZABLE." This is NO MERE INCIDENT that the same main and important character storyline from the petitioners work with 23 other fragmented similarities and paraphrases appear in the respondents work "Heroes without any legal clearance done".

The District Court and U.S. Court of Appeal committed an error in affirming the respondents argument that these expressions were random, few and isolated unprotectable scene a faire free for the taking. "Fair use".

The doctrine of fair use constitutes an affirmative defense that may be raised when there is substantial similarity between two works and evidence of copying. In determining applicability of the doctrine of fair use, courts consider statutory factors, and were all those factors met? The Supreme Court has held that these statutory factors must be considered "in light of the purposes of copyright" *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 578 (1994).

CONCLUSION

For all the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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Dated April 14, 2010

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Appendix H: Appendix H -- See Marcia Paul Description of Services - face to face settlement meeting held on May 17, 2007, NOT May 7, 2007. . . . . 45a

APPENDIX A

MALLERY vs NBC - SIDE BY SIDE CHARACTER AND STORYLINE COMPARISON

A careful comparison discloses the petitioners work and the respondents work are the only two in the history of the Comic Book Genre, TV and Film Industry to have the same storyline of a artist who can paint the future on canvas before it happens, that lives in New York City and painted a catastrophe of two NYC landmark buildings before it happens on a large canvas, a bus exploding before it happens and validated the events with newspaper clippings, attempted to stop these events with the help of other supporting character storylines and 23 additional fragmented similarities or paraphrases. This is not a common expression that is a reoccurring scene a faire. This is a unique fully developed express character and storyline exclusive to its originator, the petitioners and deserve full protection under copyright law.

IDAI MARKUS: Ordinary person with extra-ordinary abilities - can paint the future before it happens on canvas - use newspaper clippings to validate prediction - painted a catastrophe of two landmark buildings - can make enemies bleed from their eyes with their minds - can transcend time and space - dress like identical twins - search for special object at museum in NYC - travel to NYC to stop a depicted catastrophe in NYC - can walk through walls

(NBC) ISSAC MENDEZ: Ordinary person with extra-ordinary abilities - can paint the future before it happens on canvas - use newspaper clippings to validate prediction - painted a catastrophe of two landmark buildings.

(NBC) USUTU & PETER PETRELLI: Ordinary person with extra-ordinary abilities - can paint the future before it happens on canvas.

(NBC) HIRO NAKAMURA & ANDO MASAKASHI: dress like identical twins - can transcend time and space - search for special object at museum in NYC - travel to NYC to stop a depicted catastrophe in NYC

(NBC) MAYA HERRERA & ALEJANDRO HERRERA: can make enemies bleed from their eyes with their minds

OLAGAIA ATUNE: can erase memory - wear a necklace with strange symbols - use unusual killing method of opening the skull - search for special object at museum in NYC

(NBC) SYLAR GABRIEL: can erase memory - wear a necklace with strange symbols - use unusual killing method of opening the skull

PROFESSOR HEINMAN: research genetics and human genome - search for ordinary people with extra-ordinary abilities

(NBC) MOHINDER & CHANDRA SURESH, DR. ZIMMERMAN: research genetics and human genome - search for ordinary people with extra-ordinary abilities

THE "EUROPEAN": art collector - research genome - search for ordinary people with extra-ordinary abilities

(NBC) DANIEL LINDERMAN & SIMONE DEVEAUX: art collector

"SERVITOR" TI-QUI: can walk through walls

(NBC) D L HAWKINS: can walk through walls

MADAME DACHETTE: reads minds

(NBC) MATT PARKMAN: reads minds

THE USE OF SYMBOLS TO SIGNIFY PLOTS

THE USE OF ECLIPSE AS LOGO AND TO SIGNIFY PLOT EVENTS

THE PAINTING DEPICTED A CATASTROPHE OF TWO LANDMARK BUILDINGS IN NYC

IMAGES AND ITEMS TO SIGNIFY A PLOT EVENT FOR LOCATING PEOPLE WITH EXTRA-ORDINARY ABILITIES

APPENDIX B

From: JoAnn Vara
Art Director

* * *

As a former employee of NBC who's job was clearance for NBC it is outrageous to see the plaintiffs have to answer questions in a free lecture they are giving to young students if they need to shoot heroin to paint the future like the artist on Heroes. That encapsulates the whole point of why clearance is crucial and why there are laws, systems and protocol in place to uphold copyright laws. That is why NBCU has a full time script clearance coordinator on Heroes.

There is a website called I.M.D.B. or Internet Movie Data Base. It lists cast and crew information such as the roles the crew played on a production and the episodes they worked on.
There is a man by the name of Harrison Wilcox.
He is listed as a script clearance coordinator / production assistant for Heroes from 2006-2009.

Script clearance research involves breaking a script down and identifying all items that represent possible legal problems which include: real people in the public that are living examples of the fictional character, character names, business names, products, organization names, locations, artwork, music, and copyrighted or trademarked material to list a few.

There are many clearance houses that specialize in this type of research and they do this type of clearance world wide.
Clearance should especially be done if the story is taking place in an actual location such as New York City which is the same location as the fictional story to make sure there isn't a real person with the similar characteristics and attributes doing the same thing as the fictional character.

Why hasn't Marcia Paul or anyone from NBCU put forth the clearance paperwork for the artist that can paint the future?

If these systems are in place and NBCU is employing someone full time to do the above script specific clearance, where is the clearance paperwork for the pilot?

Marcia Paul is well aware of what the copyright law is and how to protect one's copyright. Why hasn't she furnished the courts with this paperwork? NBCU according to Harrison Wilcox has a separate standards report. He (as the script clearance coordinator) meets with a lawyer for the show and the writers to go over the script. If there is anything that may be an issue, it is changed. So what happened in the plaintiff's case? Where is there clearance permission to use the artist that can paint the future?

This is absolutely stunning and unheard of. The plaintiffs have spent four years fighting for their original copyrighted materials which was used without their permission or consent, defamed and they were slapped with legal fees. NBC knew the protocol and

they ignored it when it came to the Plaintiffs and their original copyrighted IP.

The law is there for NBCU, but not for the creative original talent who had a copyright well before Heroes even existed. What is the copyright law for? Protecting big companies when they want to steal from original talent?

Where is the justice for the plaintiffs?
NBCU put "standards" in place for "their" products, but are completely negligent when it comes to respecting other people's copyrighted IP.

Tim Kring stole the plaintiffs work and Marcia Paul willingly manipulated the law to protect Tim Kring and NBC's stealing.

I have just read NBC's lawyer Marcia Paul's opposition to the Plaintiffs Supreme Court Cert.

Factual Background: NBCU Lawyer Marcia Paul states: "Petitioners are a husband and wife team who claim to have supernatural powers including painting and writing about events prior to their occurrence". "Petitioners claim to have predicted September 11th, 2001 attack on the World Trade Center.

The Male Plaintiff is a fine artist that can paint the future on canvas. Isaac Mendez is a fine artist that can paint the future on canvas.

The Plaintiffs' predicted September 11th 2001 attack on the World Trade Center. In a fine art painting on canvas of Two New York City landmark buildings.

Isaac Mendez predicted an attack on two New York City landmark buildings in his fine art paintings on canvas. He also takes newspaper clippings to show when the prediction came true.

The Plaintiff's predicted a bus blowing up.
Isaac Mendez predicted a bus blowing up.

The premise of Heroes is "ordinary people with extraordinary abilities" The Plaintiffs are real life "ordinary people" with "extraordinary abilities" and the Plaintiff's fictional character Idai Marcus is an "ordinary person" with "extraordinary abilities".

The Plaintiffs' Novel and paintings are copyrighted and came years before Heroes.

Question: Clearances are done on everything from products to music and characters with any similarities. Where is there clearance here? How can it be possible to do a side by side comparison with this many similarities if Heroes is truly original? Why are there so many overlapping themes between the two works?

The Decisions Below:
"The district court found that the works at issue are not substantially similar because "nearly every instance of alleged similarity between Heroes and the plaintiffs' work relates to unprotectable ideas rather than protectable expression". " The court reached this result through a careful analysis and comparison of the parties"

Question: what is protectable under the copyright law? The combination of ideas is an expression. Why are there two male artists that can paint the future on

canvas when the real life Plaintiff's work is copyrighted? Why is it unprotectable? Why is it a scene a faire, when on the NBC/Universal production I worked on, if there was someone living with the same characteristics as the fictional character and it didn't pass clearance, it had to be rewritten? Why is clearance upheld on every other production I have worked on, but not in this case?

How can you be "complex and original" (Plaintiffs' work) and have at least 12 substantial similarities (Heroes) that Marcia Paul referenced and not be infringing on the original copyrighted work? How is the artist that can paint the future an unprotectable expression if it has never been done before the original copyrighted works by the Plaintiffs?

Concept: Ordinary people with extraordinary abilities
Character: A male artist that can paint the future on canvas
Plot/Sequence: The artist using their art to stop a catastrophe to two N.Y. landmark buildings. And using newspaper clippings to validate the prophecy.
Pace: Both works jump from place to place and between characters and lead to the similar conclusion of trying to stop a catastrophe.

There was also a character never mentioned named Usutu on Heroes who is an African man who can paint the future. This character is even closer to the Plaintiffs, but he is never acknowledged or discussed.

What about the defamation of character to the Plaintiffs?
An African American artist who can paint the future in real life who doesn't have to shoot up drugs to paint

the future and who lectures for free to children about the ability.
Then there is a person in fiction who has the same abilities, is a Latino man and needs to shoot up drugs in order to paint the future.

This is truly unheard of in production. I do not understand how this could take place having worked for NBC/Universal and knowing what the industry standard is for clearances on their projects. Knowing that peoples' whole career and lively hood are on the line if they don't get it right on set. How did this show manage to break so many of the clearance guidelines and get away with it?

Marcia Paul and all who are involved who continued this injustice for four years should be made an example of.
This is criminal and all the parties involved should be brought to justice swiftly for their complete disregard and manipulation of the law.'

As a former employee of NBC and whose job was clearance for NBC I have a question to Marcia Paul and NBC: Where were the two words ever mentioned "Legal Clearance" in any of their side of the case in the entire four years of this lawsuit? This could have been easily cleared up with the proper clearance paperwork on the part of NBCU, their clearance house, their in house lawyer on the set of Heroes, and the script clearance coordinator Harrison Wilcox.
The petitioners civil rights and copyrights have been seriously violated by NBCU for the last four years. This injustice is beyond anything I have ever seen in my professional experience.

In my opinion, the show Heroes has infringed on many of the copyrights of the Plaintiffs and the legal representation for NBC/Universal is absolutely reckless.
I see total malpractice on the part of Marcia Paul and believe her actions are criminal. It is my belief that if the "shoe was on the other foot" NBC would be swift in claiming their work and prosecuting the people who infringed on them to the fullest extent of the law. The same swiftness should apply to the Plaintiffs'. Their work is found by the courts as original, and fully developed. Their work has been copyrighted and should be fully protected by the laws and the systems in place by the entertainment industry. There were checks and balances that were never done on the part of NBC/Universal.

This situation is alarming to me in many ways. I am concerned and afraid for the status of my job if there are projects that would allow such infringement to take place. This is a huge problem for me and people who are directly responsible for clearances in productions if regulations are not being upheld to industry standards and guidelines. This would completely change my job description and as it stands now, no new doctrines have been put in place. Clearance Domain takes itself very seriously and the production houses still rely heavily on their expertise in order to get the proper insurance for their productions.
There is no protection for creative talent when a corporation can infringe in such a devastating way and use the law to cover their stealing. The enclosed article from radar will demonstrate why NBC is trying to use the Plaintiff's lawsuit to set a precedent that would give NBC the power to get around these clearance

issues which NBC feels would cut into their profit margin. If NBC wins this lawsuit, my job is in jeopardy there will be no need for clearance houses or clearance employees such as myself because NBC will then have the power to use any artists or talents' IP in any way they choose to and have the legal loopholes to cover their tracks. This would be devastating to all of the young people in TV who depend on their jobs. What is so disturbing to me is, that the same time NBC is in a court of law taking the Plaintiff's copyrighted IP without any proof of clearance or permission, I was working for NBC on one of their projects and being severely drilled under the pressure of being fired constantly if I did not follow through with the clearance procedures.

I am shocked and I plan on taking this to my union for a round table discussion to alert others in the profession to this matter. There is hypocrisy here that is stunning. On a daily basis, I have to have approval for everything that is seen on camera. The legal team has to sign off on everything, and to see such infringement happening in this case is purely criminal.

/s/ Joann Vara

http://www.clearancedomain.com/newsletter/newsletter.htm

Executive Profile

Emily Milias – Radar Pictures, Inc.

What is your position at Radar?

Director, Legal and Business Affairs. My duties include overseeing clearances for our productions.

Everyone knows how important clearances are to studios because they are "deep pockets", but how important do you think clearances are deemed to be by your productions?

Even though we are an independent production company, we have the same "deep pockets" as the studios – the E&O insurance carriers.

From our "legal" perspective, clearances are critical. For example, a distributor will not accept a picture for delivery without documentation showing that production has obtained all necessary clearances, and that each person or entity providing such clearance has waived their right to obtain equitable and/or injunctive relief. Without this, a single clearance could feasibly prevent a multi-million dollar movie from being distributed.

From the production perspective, extreme time pressures as well as the various creative preferences of department heads and directors means that obtaining all necessary clearances may not be taken seriously. To avoid this, precise procedures to be followed by all

departments should be issued by the production attorney at the outset of pre-production, and open lines of communication between the clearance service and the various departments must be established and maintained throughout photography. We try to emphasize to every production how essential it is to run everything through the clearance process.

What is the biggest or toughest clearance issue you have ever dealt with on a production?

Trying to clear the items most wanted creatively by the director/producers is perhaps the biggest issue during a production. Unfortunately, some copyright holders won't allow their item to be used in a particular production for various reasons or will request very high clearance fees, or a particular character or place name won't clear through the research process. When the business/legal affairs department is unable to sign off on a requested clearance, it is always a disappointment to not be able to provide production with their first creative choices.

A recent industry-wide increase in insurance rates and deductibles is due to an increase in claims and settlements. This affects budgets and puts even a further emphasis on clearances. Can you comment on why you think this is happening?

Many insurance companies are increasingly unwilling to underwrite errors and omissions insurance policies for productions (or will only do so for substantially increased premium payments); according to insurance brokers, the risks in this particular market are simply to great. Of course, this means that a thorough

research process as well as signed clearance agreements for every item seen in a picture becomes even more important. As part of the application process for errors and omissions coverage, insurers require an actionable representation and warranty on the part of the producer that all necessary clearances have or will be obtained.

A lot of Art Departments complain about the clearance process. What is your opinion regarding the process and the state of clearances in the motion picture industry?

If a clear set of guidelines and clearance forms are issued to all department heads early during pre-production, then the clearance process should run smoothly. Difficulties arise when the copyright holders don't respond with the urgency necessary to keep up with the immediate demands of a production.

How has Clearance Domain helped you with your clearance needs?

Having a "one-stop shopping" outfit for script breakdowns, research, clearances and product placement, and review of dailies has helped to reduce our production clearance costs and greatly improved efficiency for both the production as well as our legal department. Additionally, having an established relationship with Clearance Domain means that they understand our internal policies and procedures, making for a smooth transition into each new production.

Client Spotlight

* * *

PIERCE LAW GROUP LLP
9100 Wilshire Boulevard
Suite 225, East Tower
Beverly Hills, California
90212-3415
Telephone: (310) 274-9191 Facsimile: (310) 274-9151

Clearance Procedures Guidelines

by David Albert Pierce, Esq.

Clearance for a motion picture production requires a thorough evaluation of the screenplay, the film footage, all contracts, set dressing, wardrobe, and more. The following list of clearance procedures should be followed prior to final cut or first exhibition of a motion picture. This list should not be considered exhaustive as it may not cover all situations which may arise since every production presents its own unique issues. Filmmakers and attorneys should always review the following points carefully with one another and work together to continually monitor the production at all stages to make certain that the motion picture contains no material which could give rise to a claim. There are three main reasons why the producer must be aware of clearance issues: avoidance of liability, eligibility for E&O insurance coverage, and assurance that the film will satisfy the distributors' legal delivery requirements.

1. Pre-Production Review For Possible Actionable Script Content: Prior to the start of production, the screenplay should be read for the purposes of identifying and eliminating material that is defamatory, violates rights of privacy and publicity, or is otherwise potentially actionable.

2. Obtain A Clearance Report: A Clearance Report of the final shooting script should be obtained by a professional clearance research company. These companies perform a variety of tasks, such as, researching all story character names and places against the commonality of the names, street addresses, and business names in the general population. This will help the producer avoid possible invasion of privacy and similar type claims from people whom the film may have unwittingly portrayed. The clearance report will also identify the proper contact from which to obtain product placement clearances for any products, copyrights, or trademarks that are referenced in the screenplay.

3. Document Origins Of "Original" Unpublished Works: If the screenplay is an unpublished original, the producer should inquire into and document the origins of the work, such as the stimulus for the creation of the basic idea, sequence of events, and characters.

* * *

APPENDIX C

Interview:Harrison Wilcox - lotsofinterviews
http://lotsofinterviews.com/#/interviewharrison-wilcox/4531985068 4/2/10 8:41PM

LotsofInterviews.com
The Home of Online Interviews

Interview:Harrison Wilcox

On the 27th of November 2008 LotsofInterviews conducted a interview with Harrison Wilcox who works as a Script Clearance Coordinator on Heroes and has also written some of the graphic novels released onto the internet. LotsofInterviews.com would like to thank mr Wilcox for his time. Hope you enjoy!

Can you tell me a bit about your two different roles on Heroes? :

Script Clearance Coordinator?
Is Script Clearance checking that the script is up to NBC standards? Is it in script clearance that things like bad e.g. racist or political jokes might be taken out?

BEST AVAILABLE COPY

Script Clearance deals more with the legal permissions and protections of the show. Every script written gets sent to a research company. That company does a full report on the script and sends that information back to us. Stuff like names of characters in relation to real people, or how long it would really take Peter to fall eight stories off a building. Using that report I work with the writers and our lawyer, Safronia Johnson, to make sure there is nothing in the scripts that shouldn't be there. I also work with Art Department, Props, Set Dec, Wardrobe, and Post, to make sure we have permission to use everything that goes on camera. If we don't have permission, I try to get it. If we can't get permission, I usually come up with fictional names for things. Costa Verde and Copy Kingdom are examples of this. That's basically what I do. NBC Standards do their own reports which everyone on the show makes sure to follow.

* * *

MEMORANDUM

"EXAMPLE OF HOW NBCU DOES LEGAL CLEARANCE ON A LIVING PERSON THAT FITS THE DESCRIPTION OF A CHARACTER ON ALL NBCU'S TV SHOWS OR FILMS"

To: Bobby Cohen
Kerry Orent
Karla Nappi
Art Department
Locations Department

From: Christina Angeloudes and Lucy Wainwright (NBC Universal)

CC: Michelle Wright
Ann Lynch
Sheeraz Shah
Stephanie Weier
Wendy Cohen
Pat Murphy

Date: 17 September 2006

Re: "Definitely Maybe" – Legal Issues & Clearances

Dear All

We thought it prudent to set out a few legal issues in a memo so that everyone is clear on the position going forward

Hampton Role

By way of due diligence, we are going to ask Stephanie Weier to do a little research to establish whether any prominent faculty member of Columbia University Graduate School of Journalism fits Hampton's description (i.e. ageing alcoholic lothario).

Marshall Plumb

Any scene/script changes should be sent by the production to Marshall Plumb for clearance, all reports should be sent to both Lucy and Christina for review and approval before being used by any of the departments. The turnaround can be quick unless there is a legal issue but we always try and resolve matters as speedily as possible.

Any fictional names/companies/products/telephone numbers/number plates should be researched by Marshall Plumb or Clearance Domain and the review of such reports should be the same as above.

Stephanie Weier is currently researching the use of the name Maya Hayes urgently and we will update you as soon as we possibly can.

Usuto - Hereos Wiki

Usutu

From Heroes Wiki

Usutu was a wandering shaman in the desert sands of Africa. He was an evolved human with the ability to paint the future, ...

Contents

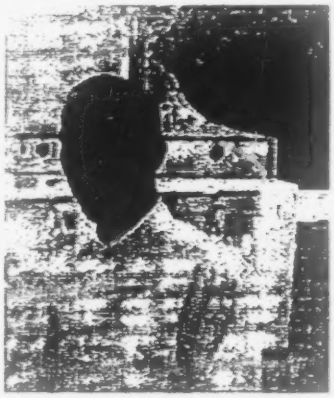
- 1 Character History
  - 1.1 The Butterfly Effect
  - 1.2 One of Us, One of Them
  - 1.3 I Am Become Death
  - 1.4 Dying of the Light
  - 1.5 Eris Quod Sum
  - 1.6 Villains
  - 1.7 It's Coming

* * *

- 2 Heroes Evolutions
- 3 Equipment
- 4 Evolved Human Ability
- 5 Memorable Quotes
- 6 Trivia
- 7 Fan Theories

Usutu
Portrayed by Ntare Guma Mbaho Mwine **First appearance** *The Butterfly Effect*
In-story stats
Known ability Precognition * * * **Gender** ♂ * * * **Date of death** 2007 **Home** Botswana **Residence** A handmade hut * * *

CONTINUED INFRINGEMENT AGAINST PLAINTIFFS



PLAINTIFF ENJAI EELE a/k/a IDAI MARKUS "THE ARTIST THAT CAN PAINT THE FUTURE" c/2005

Character History

The Butterfly Effect

Matt is teleported to the continent Africa. After a day in the hot sun he collapses, only to be found by Usutu. He helps Matt get back on his feet and gives him some water. He tells Matt he is in Africa, though he is not supposed to be here. As the two take a "spirit walk" back to Usutu's home, Matt asks to use Usutu's cell phone. Usutu replies that his phone is not getting service in this remote area, . . . The two continue walking.

One of Us, One of Them

Matt and Usutu continue "spirit walking" throughout the African desert. Matt asks Usutu how he knew his name, and Usutu replies by saying that he read Parkman's police badge. Usutu then shows Matt a painting on the ground depicting Matt and Molly Walker on the day that Matt rescued Molly from the Walkers' home. He says that when he was a boy, he was compelled to gather berries of many colors and paint. He says he painted this painting when he was a boy, and that he is no longer a boy. Matt then sees a large cliff face, covered with Usutu's prophetic paintings.

Usutu then brings Matt to his desert dwelling outside the cliff face. Matt sees a painting of him and a blonde woman carrying a baby, but Usutu says that the future has changed, and proceeds to cover the painting with a new coat of white paint. Matt asks Usutu what his future is, but Usutu doesn't respond and just

paints on the newly cleaned rock. Annoyed, Matt grabs Usutu and turns him around, but his

* * *

Evolved Human Ability

Usutu had the ability of precognition, which allows him to perceive information about future places or events before they happen. He knew who Matt was from his visions of the future, and stated that his presence in Africa meant that the future he saw had been changed. Like Isaac Mendez, he typically records what he sees in his visions in paintings.

Usutu was known to have developed this ability when he was relatively young, making him an experienced precog. He seems to be able to extend his ability to other people who share his ritual food and other paraphernalia.

* * *

Trivia

- In an interview, Ntare Guma Mbaho Mwine said that Tim Kring originally conceived of Usutu to be an archetype of "Yoda" from *Star Wars*. In fact, early scripts had Usutu speaking in broken English akin to the way Yoda speaks.

* * *

APPENDIX D

http://www.comicbookresources.com/?page=article&id=8022

Jim Lee, Michael Turner & More on "Heroes" Online Comic

by Jonah Weiland, Executive Producer | More from this Author |**FEED**

Wed, September 6th, 2006 at 12:00AM (PDT)

When the NBC television show "Heroes" makes its debut on September 25th, viewers will see a new take on the super hero genre, one which firmly plants an ensemble cast of characters with some sort of extra normal ability in the real world, albeit without the capes and spandex. The inclusion of Tim Sale and Jeph Loeb as part of the series certainly helps bring it closer to the comics industry, but "Heroes" itself is an entirely new creation from creator Tim Kring ("Crossing Jordan"). The show contains all new characters not based on any existing published characters, but that doesn't mean comics won't play a role.

* * *

For anyone who's followed Jeph Loeb's career in comics one can assume based on that preliminary list of artists that Loeb was a major force in getting these comics made, which Kring said certainly did help. "The truth of the matter is Tim Sale was brought onto the show before Jeph, although I got to Tim through Jeph because Jeph and I have been friends for many, many years," said Kring. "When I talked with Jeph about this early on - Jeph and I had several conversations while I was writing the pilot - I told him I wanted to include some artwork in the script as a sales device. Basically, I wanted to hire an artist out of my own pocket to do just a few pieces for the script. So, I asked Jeph to send me a couple of people and he got me in touch with Tim. That's how that started.

"So, whether it was Tim's involvement or Jeph's involvement, I don't know, but the show got a lot of buzz following Comic-Con International, so we were sort of on everybody's radar when we went and approached these people. Certainly Jeph's knowledge of the comics business and the people in it has been a huge help and you could couldn't ask for more."

But will these online comics see publication in the real world anytime soon? "I would certainly hope so and I'm hoping there aren't any legal issues in doing that, but my guess is - listen, I'm looking right now at color copies of these things and I just don't know why you wouldn't. They are spectacular."

"Heroes" debuts on NBC Monday, September 25th at 9:00 PM. Look for a longer interview with Kring, along with a review of the pilot and an interview with cast member Greg Gunberg in the weeks to come right here on CBR.

The respondent Tim Kring clearly states in this interview that the characters on the show like "the artist that can paint the future" has never been published before", which is a complete fabrication and violation of legal clearance by the respondent Tim Kring.

Appendix D and H clearly demonstrate that the petitioners original copyrighted intellectual property and characters like "the artist that can paint the future" have been published in several major publications worldwide years before "Heroes". Respondent Tim Kring later admitted in a media interview that "Heroes" is not the most original idea in the world, you build and borrow". NBCU attorney Marcia Paul stated in her "Brief in Opposition" that: "Petitioners also stated that the respondent Tim Kring admitted to using the "artist that can paint the future and artwork" in the pilot script as a "sale device" to pitch "Heroes" to NBC network" (petition p.17.), NBCU denies these allegations:"
The petitioners would like to state to the court that the respondents Tim Kring statement in Appendix D clearly states: "I wanted to include some art work in the "Heroes" script as a sales device". NBCU attorney Marcia Paul clearly fabricated the respondents Tim Kring statement about this material issue in her "Brief In Opposition" to The U.S. Supreme Court.

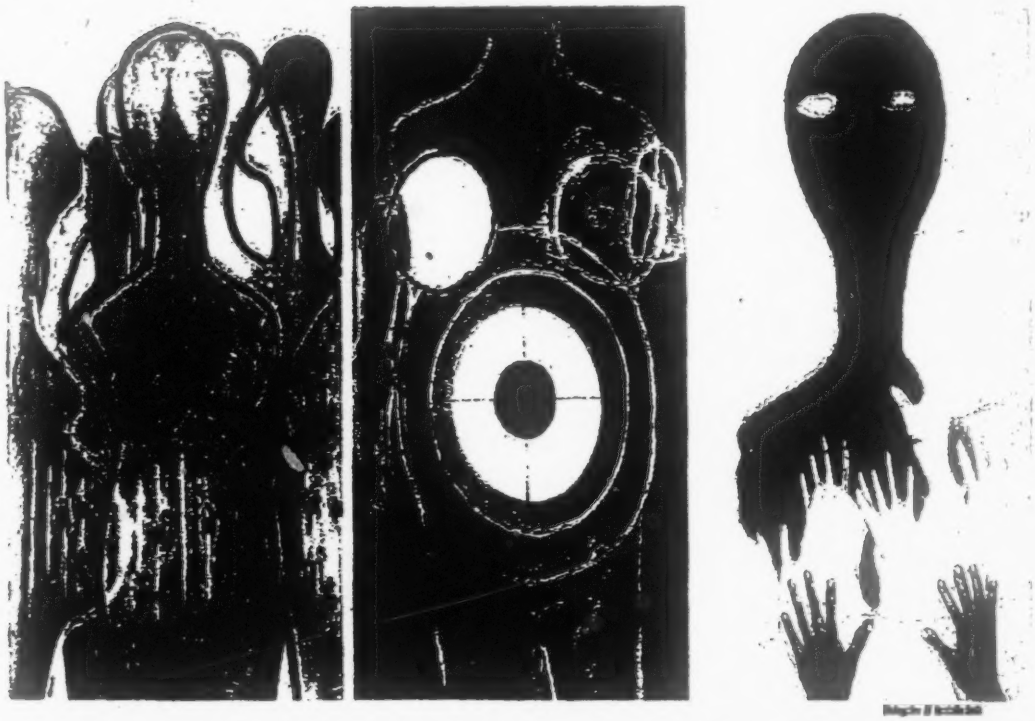
[See Fold-out Exhibit, next page]

Use of artwork in script - interview by Tim Kring - 1 -On-1 : Talking with "Heroes" Creator Tim Kring - Comic Book Resources http://www.comicbookresources .com/?page=article&id=8 146 - Russell Simmons "One World "magazine article titled: "Twin Hope"

twin hope

THE LOOP art

by [illegible]



THE HUSBAND-AND-WIFE TEAM OF EMIAH BIAA AND AMNAU EELE PAINT CANVASES WITH A MESSAGE.

FRESH ON THE SCENE FROM TEXAS, EMIAH BIAA EELE ([illegible]-EEL) simply goes by Eele. Divination, politics and family have become the thematic focus of their recent series, *Envious in America (Paradoxes in Black and White)—Urbanism 2001*. The work represents a state of emergency for Black America and traces the journey he and his wife, Amnau, have made from Texas across the United States around the world. Known as "The Twins," Eele and his wife are orally blessed with the gift of divination, as prophetic visions often appear in their dreams. Eele brings these images to life first through sketches and later as final pieces on canvas.

The couple, who once found themselves homeless due to their fight with the Florida State government, deliver a message of hope and restoration. That message is evidenced not only in Eele's art but in the creation of the Black Artist Association (BAA). BAA is dedicated to healing and educating young children—particularly those who are homeless or abused—through art, memory and divination. With the advent of Eele's *Envious in America* series, the Twins present their message of restoration not only for their own lives but the lives of an entire community.

Eele's southern dialect and upbringing provide a wealth of cultural references and Pan-Africanist views. His experiences as a child of the Civil Rights era and Black Power movement become vivid symbolism in his stark paintings, such as "It's Not My Business" and "Mother of the Target." In "Business," Eele tells the tale of repression and abuse endured by Black girls and women during slavery. His graphic oil on canvas depicts a stalk window frame accompanied by several box forms. These forms could easily stand as markers for the many lives of girls and women ravished in the night by their slave masters. The painting comes to life when you gaze closer at the scratches on the surface of the canvas. His memorial to these experiences prompts the viewer to acknowledge his/her role in the dark night of our tomorrows.

In "Mother of the Target," a dismembered female figure appears in the center of a gray muted canvas. The figure's left breast is painted white and its right breast is painted black. Her belly is outlined by repetitive white circles. In the center of her womb is a target, similar to that of a police one, that bleeds a cosmogram. Amnau revealed that the cosmogram represents access "into the living and the unseen world." Traditional Kongo-Atlantic religions view the cosmogram "as the point of intersection between the ancestors and the living." While peeling throught the multi-layers of Eele's "Mother of the Target" piece, one becomes a kind of participant in the work: one with a role, either as an assailant responsible for taking the life of a mother and unborn child or as an onlooker responsible for the lives lost while standing by.

Eele eloquently addresses our issues further in "General Population," one of the strongest pieces in the series. "Population" is a crisp, transparent painting of congregated, faceless mothers-to-be. It is painted as though it sat on an X-ray table that illuminated the prognosis of the full-bellied women and their children. The viewer immediately finds out that the future generation is one of incarcerated black babies. It is here that Eele's message of restoration is met with a clear consequential element. His bold visions, sketched in the dark, have begun to radiate light towards necessary communal awareness. Eele's *Envious in America* series urges its viewers to play an active part in the Black life cycle as stronger Black women, men and children.

BEST AVAILABLE COPY

APPENDIX E

[See Fold-out Exhibit, next 2 pages]

Copyrights for The Twins; Journey of the Soul ("Journey") copyrighted June 1, 2001 - registered April 13, 2007 and a short film excerpt from the "Journey" entitled: The Letter, copyrighted April 4, 2004 - registered September 20, 2006.

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form TX

For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

TX 6-538-876

EFFECTIVE DATE OF REGISTRATION

APR 13 2007

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

The Twins' Journey Of The Soul

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼

Amnah Karan A/K/A Amnah Karan Eele

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼
[redacted]-62

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Creator & Writer Of The Page Handwritten Book The Twins' Journey Of The Soul

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

Clifton J. Mallery A/K/A Enkai Dmaa Eele

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼
[redacted]-54

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Creator & Writer Of The Page Handwritten Book The Twins' Journey Of The Soul

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases. 2006 Year ▶

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published. June 1 Day 2007 Year ▶

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Clifton J. Mallery And Amnah Karan
[redacted] N.J. NY [redacted]

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED
APR 13 2007

ONE DEPOSIT RECEIVED
APR 13 2007

TWO DEPOSITS RECEIVED

FUNDS RECEIVED
$45.00

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form PA
For a Work of Performing Arts
UNITED STATES COPYRIGHT OFFICE

PA 1-348-956

EFFECTIVE DATE OF REGISTRATION
9 20 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

The Letter

PREVIOUS OR ALTERNATIVE TITLES ▼

NATURE OF THIS WORK ▼ See instructions

Short Film

2 NAME OF AUTHOR ▼

a Clifton J. Mallery a/k/a Enjai Omma Eele

DATES OF BIRTH AND DEATH
Year Born ▼ [redacted]-54 Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes ☑ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of USA
Domiciled in USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☑ No
Pseudonymous? ☐ Yes ☑ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
Creator, writer, and producer of the Letter a short subject film

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

b Amman Karam a/k/a Amman Karam Eele

DATES OF BIRTH AND DEATH
Year Born ▼ [redacted]-62 Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes ☑ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of USA
Domiciled in USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☑ No
Pseudonymous? ☐ Yes ☑ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
Creator, writer, and producer of the Letter an short subject film

NAME OF AUTHOR ▼

c

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 2004 Year
This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month April Day 4 Year 2004
Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Clifton J. Mallery and Amman Karam
[redacted] New York, NY [redacted]

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE
OFFICE USE ONLY

APPLICATION RECEIVED
SEP 20 2006

ONE DEPOSIT RECEIVED
SEP 20 2006

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DRD/D

APPENDIX F

National Broadcasting
Company, Inc.
30 Rockefeller Plaza
New York, New York 10112
212 664-4966
212 790-4703 Fax
gillian.lusins@nbc.com

Gillian M. Lusins
Vice President
Intellectual
Property Counsel
Law Department

October 23, 2006

Via Fax and Mail
Robert E. Grener
1350 Broadway, Suite 1507
New York, New York 10018

Re: Heroes Claim

Dear Mr. Greener:

I write in response to your letter of October 6, 2006 regarding the NBC Studios, Inc. ("NBCS") television series "Heroes" ("Series"). Your letter claims that the character Isaac Menendez and the artwork produced by that character are based on your clients Enjai Eele and Amnau Eele. Our investigation indicates that, as is the case with the entire Series, the character of

Isaac Menendez is an entirety original creation of Tim Kring, the creator of this Series. Further, the artwork produced by Isaac Menendez is collaborative effort between Tim Kring and Tim Sale, the Eisner award winning comic artist.

For the foregoing reasons, NBCS believes that any claim brought on behalf of your client would be without merit. Nothing contained in or omitted from this letter shall be deemed an admission by NBCS of any facts or a waiver of any rights, remedies or defenses of NBCS in connection with the subject matter hereof, all of which are expressly reserved.

This letter should not be construed as a recitation of facts supporting additional claims that NUTS may have in this matter, and nothing contained herein in intended to, or does, constitute a waiver of any rights, remedy or position of NUTS, each and all of which are expressly reserved.

Sincerely,

/s/
Gillian M. Lusins

APPENDIX G

based on the NBC hit series. 11/13/2006 10:04 PM

THE REAL HEROES

THE MISSION - TO FIND REAL HEROES, LIKE THE PEOPLE ON THE NBC SHOW. YOU DON'T HAVE TO BE A SUPER HERO TO DO THIS. YOU JUST NEED A SUPER HERO STORY. LET'S SEE IF WE CAN FIND OUT THE TRUTH. THIS IS A HEROES FANSITE.

Google™

Google Heroes: Search

Welcome to my blog about the NBC Show Heroes, I'm trying to find real people with real Hero stories. The response so far has been great, in the first 7 days 1000+ visitors. Thank you for your support of this blog!

Any blog post that has links in it will never contain a misleading link. Any commercial offering will be clearly marked. Other links are intended to be informative, and thought provoking.

A way you can support this blog is by using the Google features. Please post comments in their apporiate categories. All comments are welcome, even negative ones (see HateMail).

The idea behind this website is to discover people in the real world that have powers. To bring to light mysteries and generally cool ideaologies. I think that everyone has to some degree experienced powers similar to the characters in the Heroes NBC show. I would like to write and read about just that.

The site is mission based, they will be updated as the shows progress. Even the original posts change to include more information. So check back with the blog often, I try to update it more than once a week. I've added a linkorama so you can promote your sites. You can read the latest mission below.... Good luck.

ABOUT ME
RUBIXCUBEMAN
EDMONTON ALBERTA CANADA
VIEW MY COMPLETE PROFILE

PREVIOUS POSTS

prophetic utterings 1

Mission 9: Find those who have exposed themselves....

Mission 8: Unexpected Endings: Seek those who have...

Mission 7 Find who can walk through walls

Heroes Never Ending LinkoRama

Blogspot Outages

Sub Mission: Heroes Merchandise

Mission 6: Find He Who Can Fly

Mission 5: See the Connections

Mission 4: Find those who have Defied Death.

Support this site! Link to my blog!

WHO ARE THIS HEROES CAST?

//therealheroes.blogspot.com/2006/10/mission-5-see-connections.html

Real Heroes Blog on blogspot.com; based on the NBC hit series. 11/1/32006 10:04 PM

Robert De Niro and his Tribeca Film Co. Business partner Jane Rosenthal are getting much more attention than they want from "The Twins," a brother-sister-act who say they're "44th-generation diviners" and claim they predicted the terrible events of 9/11 six months before they occurred.

Forty-one-year-old Amnau Eele, who claims to be able to see the future with her same-aged brother Enjai, told this column that, in March 2001, they delivered to Rosenthal's office a portfolio of "divination art," including a drawing that spelled out ringleader Mohammad Atta's name, as well as the date, time and precise nature of the attack on the World Trade Center.

The claims are repeated in "The Letter," a short film focusing on their close encounter with Tribeca Film.

"Ms. Rosenthal viewed the work, she found it interesting, and she sent the materials to (a development executive) at Tribeca Films," asserts their home movie. "Today, The Twins wonder what would Mr. De Niro say or think if he knew that information on Sept. 11, 2001, was in his office on March 26, 2001."

Rubixcubeman said...
THERE IS A REAL LIVING ARTIST WHO CAN PAINT THE FUTURE BEFORE IT HAPPENS LIVING IN NEW YORK CITY. HIS NAME IS EELE. I SAW HIM AT HUNTER COLLEGE NEW YORK CITY ON APRIL 22, 2005.

Rubixcubeman said...
WEIRD PREMONITION?

http://www.jewishworldreview.com/0804/grove080604.asp

HINTS THAT HEROES IDEA WAS STOLEN

http//blogs.nbcuni.com/heroes/2006/09/keeping_things_subtle.php

http://www.miriadz.com/blog/291/earn-money-selling-nbc-premier-merchandise-as-a-links...

Earn Money Selling NBC Premier Merchandise As A LinkShare Affiliate

Posted on May 7, 2006
Filed Under Affiliate Networks, Affiliate Programs, Web Site Promotion

If you're new here, join the community by subscribing to my RSS feed. | RSS Feeds via Email or Enter your name and email address to the form located at the top of each blog page for email updates. Glad to have your onboard!

ShopNBC: is excited to announce that our program has launched in the **Linkshare Network**!

NBCU attorney Marcia Paul states in her motion to dismiss in the 2nd circuit court that:

'Based on supposed newly-raised facts regarding the operation of a fan website that, on the face of the information plaintiffs supply about it, is not even owned or operated by NBC. The context of the blog entries suggest "RUBIXCUBEMAN" is a fan of the television show Heroes."

The petitioners would like to state to the court that this is a "total fabrication and mischaracterization" by NBCU attorney Marcia Paul., Appendix G will demonstrate that "RUBIXCUBEMAN" is in a contract with NBCU through "LINKSHARE" to sell all "SHOPNBC" and "HEROES" products on the internet

using the petitioners likeness and original copyrighted intellectual property as "real life artists that can paint the future" from a NY Daily News newspaper article titled: Future Tribeca Stars" written by Lloyd Grove dated August 5, 2004 with out any legal clearance done by NBCU employee Harrison Wilcox.

Intellectual Property Policy

Linkshare Corporation ("LinkShare") provides affiliate marketing networks and technology that permit independent website operators to form cooperative marketing relationships using the World Wide Web. Each LinkShare network is available for use only by persons or entities that form the network as either a "Merchant" or an "Affiliate." LinkShare may provide its members with the use of bulletin board services, chat areas, forums, electronic mail postings, email service or other message or communication facilities designed for communication with other members of the Network. LinkShare is the neutral host of each affiliate marketing network it administers, and members of each network are independent persons or entities that are not controlled by LinkShare. Neither the admission nor the continued membership of any person or entity as a Merchant or Affiliate constitutes endorsement by LinkShare. LinkShare does not police their actions, nor does LinkShare undertake any responsibility for their acts or omissions.

While LinkShare encourages Merchants and Affiliates who use any LinkShare network to adopt responsible approaches to online marketing, it is possible that some Merchants or Affiliates will take actions or engage in activities through the network or otherwise

that are alleged to infringe the intellectual property rights of others.

Claims of Copyright Infringement

Upon proper notification of claimed infringement, Linkshare's policy is to respond expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity. When Filing a notice of claimed infringement with us, for such notification to be effective under Title II of the Digital Millennium Copyright Act ("DMCA"), the notification must be in writing and provided to the designated agent listed below. In accordance with Section (3)(A) of the DMCA, the notification of claimed infringement ...

* * *

The full text of this statute can be found at the U.S. Copyright Office Web Site, http://lcWeb.loc.gov/copyright.

//www.linkshare.com/legal/intellectual_property/

http://www.msnbc.msn.com/id/30601292/

6 Easy Ways to Make Money Online - Entrepreneur.com - msnbc.com

Learn how affiliate marketing can skyrocket your bottom line.

By Jon Rognerud
Entrepreneur.com
updated 12:00 p.m. ET, Wed., May 6, 2009

A staggering $2.1 billion in affiliate marketing fees were paid to blog and website owners in 2008. This finding in a recent study by Jupiter Research confirms what many savvy Internet marketers have known for a while: Affiliate marketing has become one of the top business opportunities online because the startup costs are so low and the income you generate can be mind-blowing.

Affiliate marketing involves having your own site and sending your traffic to someone else's site to buy their products or services. For every sale initiated by a link from your site, you earn a percentage--an affiliate sales commission.

Affiliate marketing can be done on a part-time basis, and many are so successful that they've made it their full-time job. Equally exciting, you can get in the game in just a few hours. But how successful you are is based on the amount of time and effort you devote. Here are six tips to get you started:

1. Create a website or blog
To start as an affiliate marketer, you must have a site on which to place links to the products or services you recommend. There are many inexpensive website services such as Hostgator and GoDaddy. It's also easy to set up a free blog through services such as Google's Blogger blog network. I also use Namecheap for domains and Hostnine (get a reseller account) for hosting.

2. Decide your product/service niche
Affiliate marketers help companies and entrepreneurs sell everything from jewelry and cell phones to website services and how-to e-books. Choose an area you're familiar with or one you're enthusiastic about learning. You'll be more likely to do the work and less likely to get bored before the money starts rolling in.

3. Find products and services to promote
Many affiliate networks exist to connect merchants with affiliate site publishers who can help sell their goods. Companies such as:

- Clickbank, E-junkie and PayDotCom lead the pack in connecting the creators of e-books and software with affiliates to help sell their digital download products.
- Commission Junction is popular for those who want to sell more traditional wares ranging from travel services to janitorial franchises.
- Google AdSense, which doesn't require your involvement to result in a sale. Your income is realized on a pay-per-click basis, just for leading your traffic to click to a merchant's site. PPC affiliate programs pay a lot less than programs where your referral must result in a sale. Keep in

mind that a site peppered with ads and no authority or trust can look and feel like spam, and you won't get good results.

4. Affiliate site content

There are two main approaches or business models to choose from when setting up an affiliate marketing site:

- Resource Sites These sites are focused on offering lots of how-to articles and posts, and then provide affiliate links or banner ads to click for more details. Frequently adding fresh related content is vital because it gives people a reason to return to your site--and click some of your money-making links.
- Review Sites You've tried the products in your niche, now you write them up and rate them to help your site visitors decide what to buy. For each product you review, you provide a link or banner ad that clicks through for sales on your merchant partner's site. Less frequent content updates are necessary--just tweak your site about once a week to let the search engines know your site's still alive, and always try to build links.

5. Affiliate sites must attract lots of targeted traffic to succeed

Most people visiting your website or blog won't click your affiliate links. That's why it's crucial to employ a mix of marketing tactics to increase traffic--highly targeted traffic--to your site.

There are four main ways to get more site exposure and attract more potential customers:

* * *

APPENDIX II

LAWYERS

NBC Universal, Inc.
Invoice No. 5605620
Page No. 2

DATE	PROFESSIONAL	TIME	DESCRIPTION OF SERVICES
05/07/07	L. Koonce	0.50	Review of manuscript ("Journey")
05/07/07	M. Paul	2.50	Emails to and from Lackowitz, H. Lane, G. Lusins regarding manuscript and regarding meeting; interoffice conferences with L. Koonce; review manuscript; revise draft brief; research probative similarity

* * *

05/17/07	L. Koonce	3.20	Pre and Post conference meetings with client; settlement meeting with plaintiffs and plaintiff's lawyers; interoffice conferences with M. Paul regarding brief (revisions based on meetings); review emails regarding Kring creation; revisions to brief
05/17/07	M. Paul	2.50	Pre and Post conference meetings with client; settlement meeting with plaintiff and plaintiff's lawyers; interoffice conferences with L.Koonce

* * *